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GROUP 3600

Case No. 4660/5200

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Timothy H. Daily et al.

Serial No.: 09/846,141

Examiner: Matthew C. Graham

Filed: April 30, 2001

Group Art Unit: 3683

For: STABILIZER BAR

**APPELLANTS' REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

By an Amendment After Appeal Pursuant to 37 C.F.R. § 1.116(c) filed concurrently herewith (copy attached), appellants have requested the cancellation of Claims 2-4, 7-13 and 15-18. Entry of the amendment would leave only Claims 5, 6 and 14 in the application. This

Reply Brief will address only those claims, treating the appeal as if the amendment had, in fact, been entered.

Claim 5 is a combination of independent Claim 5 and its dependent Claim 8. Claims 6 and 14 depend from Claim 5. Applicants respectfully submit that independent Claims 5 is patentably distinguishable from the prior art relied upon.

The Examiner has rejected Claim 5 (8) as unpatentable over *Francois* in view of *Andersen* under 35 U.S.C. § 103(a). The Examiner's Answer acknowledges that the prior art *Francois* patent does not show a composite rod which employs, along with oppositely inclined ( $45^\circ \pm 15^\circ$ ) fibers wound in at least two separate plies, a third ply or plies having fibers substantially aligned ( $0^\circ \pm 15^\circ$ ) with the axis of the rod. Nevertheless, Examiner suggests that:

“Any one of even rudimentary knowledge of forming fiberglass understands that plies are laid successively at different angles so as to increase the strength....”

The fact remains, however, that no prior art of which applicants are aware shows or suggests a composite rod with the claimed fiber pattern. The Examiner further contends that:

“...the use of plugs would have been obvious to any one of ordinary skill in the art as an additional securing means in view of the teaching in both *Francois* and *Andersen* to use internal connections.”

Once again, however, the fact remains that neither *Francois* nor *Andersen*, nor any other prior art with which applicants are aware, disclose a stabilizer bar rod which is tubular and

has open ends, first and second arms with recesses which receive those open ends, and a plug within both an open end and a recess at the joinder of each arm to the tubular rod.

The fact is that Claim 5 (8) defines a stabilizer bar assembly which comprises both a tubular composite rod shown nowhere in the prior art and a structure which mates that specific composite rod with stabilizer bar arms in a specific manner shown nowhere in the prior art. Applicants respectfully submit the Examiner's argument that both of these related features would have obvious to one of ordinary skill in the relevant art is untenable under controlling law.

As the Examiner knows, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making a claimed combination. *C.R. Bard, Inc. v. M3 Systems, Inc.*, 48 USPO 2d 1225 (Fed. Cir. 1998). In the present case, the prior art does suggest combining a filament wound torsion tube with a structural fitting (10 and 13 in *Francois*). However, the combination described explicitly in Claim 5 includes a filament wound torsion tube having a fiber pattern not shown by the prior art and tubular rod connections of that tube to end arms in a manner not shown by the prior art. Applicants submit that combining two references which show neither of two salient claimed features to render a device combining both of those features obvious is a step that can be taken only if the hindsight suggestion of the claimed invention is used.

It is respectfully requested that the Amendment after Appeal be entered and the rejection of Claims 5, 6 and 14 withdrawn. The application should then be in condition for allowance.

Respectfully submitted,



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**Attachment**

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